IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.265 OF 2005

1. Mithalal N. Sishodiya
r/o.Vallabh Niwas, 2nd Floor,
Room No.20,142,
D.I.Lalbaba Compound,
Bhuleshwar, Mumbai 400 020.

2. Ramesh Kumar D. mehta,
r/o.Muljibhai Building,
1st Floor, 74/79,
Nanubhai Desai Road,
Mumbai 400 020. Petitioners

versus

1. State of maharashtra.

2. The Charity Commissioner,
Mumbai.

3. Maha Pragya Vidya Nidhi
Foundation, 110, Kesarabi B.
Dagalia, 90, Neeta Building,
4th Floor, C.Road, Marine Drive,
Mumbai.-02.

4. Bhawarlal T. Dagalia,

5. Pannalal S. Surana

6. Hulaschand J. Choraria

7. Madanlal N. Tated,

8. S.C.Gouti

9. Shantilal Bhavarlal Jain

10. Pyarchand Nemichand Sisodia

11. Mansingh H. Baid

12. Manakchand C. Parekh

13. Dinesh Kumar R. Kothari

14. Maheshkumar M. Kothari

15. Kundanmal D. Dhakad,

16. Ganpat Kothari,

17. Indermal Dhakad Respondents

AND

Union Bank of India Intervenor

Mr.Sanjay Jain with Gabriel Pillai i/by Pillai & Co. for petitioners.

Mr.Milind Vasudeo with M.G.Gawade for respondents 3 to 9.

Mr.J.B.Chinai, Sr.Advocate i/by S.Kumar Singh for respondents 10 and 14 to 17.

Mr.Shyam Diwan i/by Consulta Juris for Intervenors.

Ms.Geeta Shastri, AGP for respondents 1 and 2.

Respondent nos.11 to 13 are served.

CORAM : H.L.GOKHALE AND
S.C.DHARMADHIKARI, JJ.

DATE : 6th May 2005

PC :

1. Rule. Respondents waive service. By consent Rule made returnable forthwith. Heard counsel appearing for parties.

2. By our order dated 9th March 2005 we had recorded statement of learned counsel appearing

for petitioners and respondents 10 and 14 to 17 that they will arrange to deposit in this Court a sum of Rs.2.20 crores (Rs.Two crores twenty lakh only) which is the amount of loan taken by respondent no.3 Trust from Union Bank of India, the Intervenors. They further said that the petitioners and respondent nos.10 and 14 to 17 will arrange to give personal guarantee for the balance sum. This was with a view to see to it that there is a proper security to the Union Bank of India and also that the said Trust does not have to depend on the security given by only one person i.e. respondent no.8 giving vast power to him in the management of the Trust.

3. This order was passed because counsel appearing for these persons submitted that they are keen on becoming members of respondent no.3 trust. They are further keen in ensuring that the entire ground floor portion under the stilts of a building belonging to the trust is kept vacant for the benefit of children attending the school, which is to function on the upper floors of the Trust building that is situated at Kalbadevi, a crowded area in South Mumbai.

4. Upon time being extended, ultimately, the

Registry intimated that a sum of Rs.2.20 crores (Rs.Two crores twenty lakh only) has been deposited with the Prothonotary & Senior Master of this Court. The cheques for this amount have been realised and credited to PLA of the Registry. Thus, the statements made by petitioners and respondents nos.10 and 14 to 17, have been complied with.

5. Turning to the merits of the matter, petitioners challenge orders passed by the authorities exercising powers under Bombay Public Trusts Act, 1950 (hereinafter referred to as "BPT Act" for the sake of brevity). Petitioners are trustees of Aacharaya Maha Pragya Vidya Nidhi Foundation (hereinafter referred to as "the A.M.P. Trust") which is registered under the provisions of BPT Act, 1950. Respondent no.2 is the Charity Commissioner, Maharashtra State. Respondent no.3 is the Trust. Respondent nos.4 to 8 are trustees and office bearers managing the affairs of the trust. Respondent no.8 is the Managing Trustee. Respondent nos.9 to 15 are also trustees of the said trust. Respondent nos.10, 14 to 17 support petitioners, whereas, respondent nos.9, 12 and 13 support respondents 4 to 8. Additionally, Union Bank of India is also

impleaded as party to this petition by allowing the Chamber Summons moved by the bank to join into this writ petition.

6. The main objects of the above trust are :-

(a) to establish or take over and maintain schools, colleges, Universities and other educational institutions,

(b) for making available to the poor and needy persons the benefit of Dharmashala, Sanatorium, Health Home, Recreations etc.,

(c) for providing monetary aid or other help,

(d) to the persons affected by natural calamities,

(e) to provide monetary or other assistance for purchasing equipments, instruments, books etc. to the students.

7. One Sheth Gokuldas Tejpal Charities (hereinafter referred to as "G.T.Trust" for the

sake of brevity), a public trust also registered under the BPT Act, owns immovable properties. One of the immovable property is admeasuring 1760.04 sq. mtrs. bearing C.S.No.1714 of Bhuleshwar Division situate at Dadyseth Agiary Lane, Kalbadevi Road, Mumbai - 400 002. This property is hereinafter referred to as the said property. It consists of a school building. The structure is built on almost the entire plot. The building consists of ground and four upper floors as well as part 5th floor. The plot has been earmarked for school. The said G.T.Trust was intending to sell the said property as it was not in a position to carry on educational activities. Since the objects of the A.M.P. trust are to establish or take over and maintain schools and colleges, it was interested in buying the said property. At the relevant time there were 14 trustees of the A.M.P. trust.

8. By an agreement dated 1st July 2002 G.T.Trust agreed to sell the said property to the A.M.P. trust on "as is where is" basis for a consideration of Rs.5.50 crores. Obviously, the agreement was subject to sanction from the Charity Commissioner.

9. It is the case of the petitioners that the A.M.P. trust convened Extra-ordinary General Body Meeting on 7th July 2003 but the Agenda for the said meeting did not specifically include an item pertaining to this transaction. Be that as it may, at this meeting, offer of nationalised banks to finance the transaction between the G.T.Trust and the A.M.P. trust was discussed. It appears that respondent no.8 was authorised to negotiate and finalise terms and conditions of an agreement with the lending bankers. This respondent was authorised to execute all powers of the Managing Committee and regulations of the trust were altered by incorporating clauses 17(r) and 20 to give vast powers to respondent no.8. A Change Report was filed with the office of the Charity Commissioner. The same was accepted some time in January 2004.

10. The G.T.Trust obtained sanction of the Charity Commissioner and the learned Charity Commissioner accorded sanction to the sale of the property of G.T.Trust. In other words, transaction between G.T.Trust and the A.M.P. Trust was approved on the condition that the said property would be utilised for secondary education. Thereafter, negotiations with Union

Bank of India and the said trust fructified into a sanction of term loan of Rs.4.40 crores repayable in 40 equal quarterly instalments with moratorium of one year. A letter dated 24th November 2003 was addressed by the Union Bank of India to this effect. After receipt of this letter, said trust applied to the Charity Commissioner for granting permission to raise this loan. The Charity Commissioner granted permission vide order dated 20th January 2004. The sanction accorded by the Charity Commissioner to raise loan was on a condition that all trustees shall execute personal guarantees in favour of Union Bank of India. Said trust purchased the said property from G.T.Trust under Registered Conveyance dated 27th February 2004. The consideration was Rs.5.50 crores. A sum of Rs.1.10 crores was already paid and balance of Rs.4,40,40,000/- was paid after loan from Union Bank of India.

11. It appears that at a meeting held on 5th April 2004 a proposal was mooted by the trustees for letting out a part of the premises admeasuring 4,000 sq. ft. out of the ground floor area of said property to Union Bank of India for 20 years. Petitioners complain that

this meeting was held without proper notice to the members. It appears that at this meeting of the managing committee, it was resolved that this portion be leased in favour of Union Bank of India. Although, the proposal was for some reasonable period, the resolution provides for lease of 20 years.

12. An application was made for sanction of the Charity Commissioner to this proposal of lease as well. That application was also allowed.

13. Thus the Change Report, the permission to raise loan of Rs.4.40 crores and the grant of lease in favour of Union Bank of India for 20 years were the prayers which have been granted by the Assistant Charity Commissioner and the Charity Commissioner. The order passed by the Assistant Charity Commissioner is in turn confirmed in revision applications. All these orders are subject matter of challenge in this writ petition.

14. Before proceeding further it is relevant to note that the Change Report permitted powers and functions of Managing Committee to be exercised in matters pertaining to availing loans of bank

by an individual, Mr.S.C.Gauti (respondent no.8) and in pursuance of such power being conferred, actions have been initiated by him on behalf of the trust. In turn, he has guaranteed by execution of personal guarantee the loans availed of by the trust. The petitioners are opposed to vast and exclusive powers being given to one individual. It was noted that out of Rs.4.40 crores which have been sanctioned, Rs.2.20 crores have actually been disbursed on the personal guarantee given by respondent no.8. If amounts are brought in by the petitioners as well as others who are interested in affairs of the trust, then such persons who bring in monies and make contributions could be considered for benefits of membership of the trust. We had also indicated that if all cheques are realised, then the Court will issue necessary directions on the next date. Accordingly, we have heard parties.

15. Mr.Sakhare, learned Senior Counsel appearing for petitioners as well as Mr.Chinai, learned Counsel appearing for respondent nos.10 and 14 to 17 supporting the petition urged that the authorities exercising powers under B.P.T. Act have committed a serious error apparent on the face of record in allowing a Change Report

submitted to them. They contended that legality and validity of the Change Report has to be inquired into and both, Assistant Charity Commissioner as well as the Charity Commissioner have erred in law in not going into the legality and validity of the change. They submit that from the record it is abundantly clear that the change was effected with a view to confer unbridled and unguided powers upon Mr.S.C.Gouti (respondent no.8). According to them, the very purpose of the amendment/alterations to the Trust Deed/Rules is to enable Mr.Gouti to take control of the affairs of the Trust. They submit that the resolutions were not supported by requisite majority and the Charity Commissioner ought to have considered this aspect and should not have approved the change. They contended that the ultimate purpose of the change is to put the property of the Trust to commercial use which is contrary to its objects.

16. Mr.Chagla, learned Senior Counsel appearing for respondent nos.3 to 9 and 11 to 13 as well as Mr.Vasudev appearing for the A.M.P.Trust urged that the petitioners as well as respondents supporting them have absolutely no regard for the interest and benefit of the Trust. They are bent

upon interfering with the affairs of the Trust without in any manner taking into account the fact that valuable properties have to be safeguarded. At no point of time was it the intention of respondent no.8 to take control of the properties of the A.M.P. Trust or the affairs of the Trust. On the other hand, for a very limited purpose and to help the Trust the powers were conferred upon respondent no.8. Respondent no.8 has furnished his personal guarantee. All that he was doing was to obtain loans for the benefit of the A.M.P. Trust and to discharge its liabilities. Since the liability was to be discharged with the assistance of a nationalised bank, the Nationalised bank was granted limited right to use a part of the property. Therefore, all changes were in the interest of the Trust. The other orders enabling applying for loans and granting lease of a portion of the said property are to give effect to and implement the transaction of the G.T.Trust and discharge the liability of loan. All orders are passed in exercise of the powers conferred by B.P.T.Act, and this Court cannot in exercise of its writ jurisdiction, interfere with them as if it is exercising appellate powers.

17. In support of these submissions reliance is placed on a decision of the Supreme Court in the case of **Smt.Damyanti Naranga Vs. Union of India and others reported in AIR-1971-SC-966** as well as decision of this Court in the case of **Mrs.Sejal Rikeen Dalal and others Vs. The Stock Exchange, Bombay and another reported in AIR-1991-Bom-30**, on the point as to whether any direction can be issued to admit somebody as member of Trust. Reliance is also placed upon a decision in the case of **Abhay Pado Bose Vs. Managing Committee of Queen's Anglo Sanskrit School, Lucknow reported in AIR-1916-Oudh-94**.

18. With the assistance of learned counsel appearing for both sides we have perused the application to the Charity Commissioner for obtaining loan to the tune of Rs.4.40 crores and for enabling the Trustees to enter into a lease with Union Bank of India in respect of portion of the property for 20 years and the Change Report. The first order on the Change Report passed by the Assistant Charity Commissioner is unreasoned. It permits an addition of new rule (r) after Rule 17(q) in the Rules and Regulations governing the A.M.P. Trust. A perusal of the order indicates that neither is the legality nor is the validity

of the change gone into and adjudicated. It is well settled that power under section 22 of the Bombay Public Trust Act is not administrative but quasi judicial. The Deputy or Assistant Charity Commissioner has to hold an inquiry to satisfy himself that a change has occurred and/or is necessary. This exercise cannot be termed as nothing but quasi-judicial. The Charity Commissioner is enjoined to record findings with reasons. In the instant case, the change was to incorporate sub-rule (r). By that, respondent no.8 was empowered to exercise all or any of the powers conferred under Rule 17 on the Managing Committee. By introduction of sub rule (r) even the General Body's control on the Managing Committee is sought to be taken away by introducing a non-obstante clause. Respondent no.8 was to function as Managing Committee till the loan availed from the bank remains outstanding and till such time as his personal guarantee is in force. Nobody was to question or interfere in his sole discretion till then. Thus, the Managing Committee itself was replaced by respondent no.8 and even the control of general body became extinct. Such drastic change in the rules and regulations could not have been accepted without an inquiry.

19. Once the Assistant Charity Commissioner commits this mistake, his order is expected to be corrected in revisional jurisdiction. That is how revisional jurisdiction should have been exercised by the Charity Commissioner. The legal position as well as factual aspects were placed before him. Even the revisional jurisdiction has not been exercised applying the well settled principles. There is absolutely no discussion about the legality and validity of the change. The entire discussion is only in one para (para 28) of the order passed by the Charity Commissioner on 4th February 2005. Therefore, both these orders are unsustainable and deserve to be set aside.

20. Since a valuable property of the Trust was to be utilised for the purpose of enabling discharge of bank loan, the Charity Commissioner was obliged to find out as to whether transaction with Union Bank allowing it to use the property for 20 years was for the benefit of or in the interest of Trust or not. There was necessity to go into the question as to whether there was any compelling necessity to enter into such transaction. The sanction sought was for lease

of immovable property for 20 years. That apart, the portion which was to be kept open for use of children is the subject matter of lease. The building is a school building. Object of the Trust is to utilise the properties for education. The A.M.P. trust itself is an Educational Trust. This being the position, taking away an open space for such a long period was surely not in the interest of the Trust. Therefore, transaction should not have been sanctioned straight way. Hence, the order granting sanction to the lease of a immovable property belonging to the said trust, for twenty years, in favour of Union Bank of India is set aside.

21. Similar is the case where sanction was given to borrow Rs.4.40 crores from Union Bank of India. Whether the said application should have been granted and moreso when there was a serious challenge to the benefit to the A.M.P. trust and the school in lieu of the facilities is a matter which is not gone into. Mere obtaining of loan is not objectionable. However, the terms ought to have been imposed after hearing affected parties and considering objects and purpose of the Trust. The fact that the school building is situated in a crowded locality, that there are no

open spaces available in the vicinity and that, therefore, the ground floor portion was necessary for the activities of the school, are aspects which had to be kept in mind.

22. However, now that the loan has been disbursed to the extent of Rs.2.20 crores, we do not wish to disturb the impugned order in its entirety but only with regard to the terms and conditions thereof. Thus this order i.e. 20th January 2004 imposing conditions requires to be interfered and is hereby set aside. We are setting aside the same to the extent indicated above.

23. Once the above view is taken, then the decisions brought to our notice have no application. Those proceed on their peculiar facts. The ultimate direction granted by us does not in any manner interfere with the right of the Trustees. Our interference becomes necessary for restoring the Managing Committee and its powers. This is the distinguishable feature. Hence, the decision of the Supreme Court cited before us has no application. Equally misplaced is the reliance on the other decision of a Single Judge of this Court with regard to membership of a

stock exchange. Therein the Stock Exchange Rules and Regulations and the nature of membership are considered. It cannot apply in the present case. The decision of the Oudh High Court (supra) is distinguishable on facts because we are not directing anybody to be admitted to the membership of the Trust but only to consider applications made in that behalf, which are otherwise in order. We are not interfering with the discretion of the Managing Committee but directing the Managing Committee to do what it is supposed to do under the Rules and Regulations.

24. The learned counsel appearing for the petitioners as well as Shri Chinai have forwarded a list of persons who have made the contributions of Rs.2.20 crores. There are about 32 persons who have contributed. There are others (12) who have also made contributions. The total of all such contributions is Rs.2.20 crores. The learned counsel appearing for the trust as well as Mr.Gauti (respondent no.8) agree that if amount deposited in this Court is utilised for repaying the loan and respondent no.8 is released from his obligations, they have no objection in considering the applications made by contributors/donors for membership of the trust.

They will entertain such applications and consider them in accordance with the rules and regulations of the trust. We have made it clear to the counsel appearing for the parties that the applications would be considered in accordance with the rules and regulations as they originally stood i.e. before the change was incorporated and accepted. Even this suggestion has been accepted. This being so, prima facie, we do not see any reason why the applications of the donors for membership should not be accepted.

25. At this stage Shri Diwan appeared for Union Bank of India and urged that he should be heard before the decision is taken in respect of lease in favour of Union Bank of India. Learned counsel for petitioners as well as respondents left the matter to the Court inasmuch as they urged that they would abide by all directions issued with regard to the lease in favour of Union Bank of India. We have heard Shri Diwan appearing for Union Bank of India. We made it clear to Shri Diwan that Union Bank of India being a nationalised bank is not expected to raise technical objections. Inasmuch as the property is utilised for providing open space for school children, the Union Bank of India must

make alternate arrangement and shift after the initial period of three years expires. Shri Diwan took us through relevant clauses of the lease deed and also the affidavit filed in support of the Chamber Summons taken out by the bank. He contends that in pursuance of the lease deed, the banker has moved in the premises. It has spent about Rs.29.00 lakh for placing Safe Deposit Vaults. Further, necessary furniture and fixtures have been provided. The bank proposes to use the premises with effect from May 2005. He submits that the bank had to vacate the earlier premises in view of the decree passed by the Small Causes Court and therefore the bank's interest should not be adversely affected and it should be allowed to continue for a longer period or in any event apply for renewal of the lease. He submits that the amount due to the bank from A.M.P.Trust is Rs.3,07,49,987.87 as on 2nd May 2005.

26. We are of the view that considering the objects of the trust and the purpose for which the ground floor portion is to be utilised, the bank will have to make alternate arrangements after the period of three years. It cannot insist upon renewal of the lease if the space is

required for the purposes set out above. The bank is expected to take a reasonable and rational approach and make alternate arrangements in the sufficiently long period provided to it. Before disposing off the matter, we may state that the Authorities exercising powers under BPT Act, 1950 ought to have decided the applications made to them in the light of the objects of the Trust and bearing in mind its interest. Even the Change Report ought to have been scrutinised in the light of settled legal principles and keeping in mind the aforesaid factual position. Inasmuch as this petition is a continuation of the proceedings before the Charity Commissioner, we think it fit to interfere. Since basic features of the controversy and settled principles have been ignored, we set aside the impugned orders. This we are doing despite consent of parties.

27. The amount disbursed by Union Bank is Rs.2.20 crores. The repayment thereof is secured by the deposit in this Court of Rs.2.20 crores. Till this amount is released in favour of the bank it will fetch interest. Hence, bank will recover the same with interest. In view of this, the order permitting availing of loan of Rs.4.40 crores and conditions for the same deserves to be

set aside. Now that the cheques have been realised, we dispose off the petition by following directions:-

A) The orders passed by learned Assistant Charity Commissioner on the Change Report, by the Charity Commissioner on the application for grant of lease in favour of Union Bank of India and revision applications preferred by the petitioners, are quashed and set aside.

B) Rule is made absolute in terms of prayer clause (a) of the writ petition as indicated and to the extent stated hereinabove.

C) It is directed that the lease in favour of the Union Bank of India to continue for three years only.

D) The amounts deposited in this Court would continue to be invested by the Registry till the respondent no.3 trust takes an appropriate decision in accordance with the unamended and unchanged Rules on the applications for membership of all these applicants.

E) It is only after the applications are disposed

off and allowed that the respondent no.3 will be entitled to apply for withdrawl of the sums deposited in this Court. It will be open for respondent no.3 trust thereafter to hand over the amount to Union Bank of India for discharging the liability arising out of the loan.

F) After the process of enrolling the members is complete, the Charity Commissioner shall finalise the list of members and hold fresh elections to the Managing Committee of respondent no.3 trust.

G) The applications for memberships to be considered and disposed off within a period of six weeks from today. The final list of members to be forwarded to the Charity Commissioner within four weeks thereafter. The Charity Commissioner to undertake further process of holding the elections and complete it within a period of six weeks thereafter.

H) It is directed that after the Union Bank of India vacates the premises after three years, the ground floor portion presently in occupation of the Union Bank of India shall be retained as open space/play ground for the school.

28. We appreciate the stand taken by all the learned counsel for resolving the disputes and ensuring efficient management of the trust. We hope and trust that the directions issued by us with their consent would safeguard and protect interest of the trust. It is clarified that these directions are in addition to the directions/orders issued earlier and parties shall abide by the same. Rule made absolute in the aforesaid terms with no order as to costs. It is clarified that this order shall not affect the rights of Union Bank of India to appropriately adjust or recover the amount due to it. All remedies in law are open in this behalf.

29. Mr.Vasudev applies for stay of the order for eight weeks. Mr.Jain opposes. Request is rejected.

(H.L.GOKHALE, J.)

(S.C.DHARMADHIKARI, J.)